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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Tokelau

Working paper prepared by the Secretariat

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I. General background

1. Tokelau,[1] a Non-Self-Governing territory administered by New Zealand, consists of three small atolls in the northern South Pacific (Fakaofo, Nukunonu and Atafu), with a total area of approximately 12.2 km^2. Each atoll comprises strips of land up to 200 m wide and not more than 5 m above sea level. Samoa, 480 km to the south, is the nearest sizeable neighbour and the principal point of contact for Tokelau with the outside world.

2. Tokelauans are Polynesians with linguistic, family and cultural links with Samoa. The last census of 19 October 2006 recorded a de jure resident population of 1,466, with the following breakdown by atoll: Atafu, 524; Fakaofo, 483; and Nukunonu, 426. An additional group of 33 Tokelauans was recorded in Apia, Samoa. As New Zealand citizens, Tokelauans may reside in New Zealand, and therefore also Australia. In 2006, almost 7,000 people in New Zealand declared themselves to be Tokelauan. Sizeable Tokelauan communities also exist in Australia, American Samoa and Samoa.

3. The New Zealand official with principal responsibility for relations with Tokelau is the Administrator of Tokelau, who is based in Wellington and is appointed by the Minister for Foreign Affairs of New Zealand. The Administrator heads the Office of the Administrator, which has day-to-day responsibility for New Zealand/Tokelau relations. In October 2006, David Payton was appointed Administrator for a term of three years. Pending a decision on the appointment of a new Administrator, the New Zealand Secretary of Foreign Affairs and Trade, John Allen, currently acts in the position.

II. Constitutional and political developments

A. Local self-governance

4. As reported in previous working papers on the question of Tokelau (see A/AC.109/2001/5, A/AC.109/2002/6, A/AC.109/2003/10, A/AC.109/2004/8 and A/AC.109/2005/3), the current process of constitutional development stems from the 1998 decision by the General Fono (the national representative body of Tokelau) to endorse a comprehensive report entitled "Modern House of Tokelau", which addressed the core issue that faced Tokelau in creating a constitutional framework that suited an atoll- or village-based self-governing community that respected traditional decision-making customs.

5. In accordance with the terms of the 1998 "Modern House of Tokelau" report, General Fono delegates are now elected on the basis of proportional village representation with delegates elected through universal village suffrage, rather than a system of equal village representation with delegates appointed by the respective Village Councils, as previously. In 2004, further decisions were made on the method of appointment of the Chairperson of the General Fono and on the role and responsibilities of the six-person Council of Ongoing Government, which is the executive Government during times when the General Fono is not in session. The

[1] The information contained in the present working paper has been derived from published sources, including those of the territorial Government, and from information transmitted to the Secretary-General by the administering Power under Article 73 e of the Charter of the United Nations.

Council consists of three Faipule (representatives of each village) and three Pulenuku (mayor of each village). The position of Ulu-o-Tokelau, or Head of Government, rotates annually among the three Faipule. In 2009, it was held by the Faipule of Fakaofo. The Faipule for Atafu was scheduled to become Ulu-o-Tokelau for 2010 on 20 February 2010.

6. Village elections for Faipule, Pulenuku and General Fono delegates are held in each village in January, every third year. The most recent elections were held from 17 to 19 January 2008. Representation in the General Fono currently stands at Atafu, seven delegates; Nukunonu, six; and Fakaofo, seven.

7. Since July 2004, the three Village Councils have taken full responsibility for all village public services. That decision emanated from the Modern House of Tokelau approach, whereby the traditional Council of Elders on each atoll should serve as the foundation for any future governance structure. Under that arrangement, the three Village Councils would delegate authority to the General Fono for activities that needed to be handled at the national level (see A/AC.109/2005/3). The remaining aspect of the Modern House project, known as Friends of Tokelau (i.e., keeping Tokelauan communities in New Zealand and other interested parties informed of developments) is handled by the Office of the Council of Ongoing Government of Tokelau and the Office of the Administrator in Wellington. The Office of the Administrator has been incorporated into a larger Special Relations Unit, which is responsible for New Zealand's relationship with Tokelau (as well as with Niue), and is staffed by officers of both the Ministry of Foreign Affairs and the New Zealand Agency for International Development. A member of the Tokelau Public Service works in the Office of the Administrator.

B. Referendum process

8. In 2003, the General Fono took a formal decision, with the support of all three Village Councils, to "endorse self-government in free association with New Zealand as the choice to be actively explored with the New Zealand Government". During a visit to Tokelau in August 2004, the then New Zealand Prime Minister welcomed decisions by Tokelau on its future political status and assured Tokelau of the ongoing friendship and support of New Zealand as it moved towards an act of self-determination.

9. In August 2005, the General Fono approved a draft constitution as the basis for the proposed act of self-determination, as well as the text of a draft treaty of free association between Tokelau and New Zealand. In November 2005, the New Zealand Cabinet gave its formal approval. The so-called "referendum package", consisting of the draft treaty and the draft constitution, was to form the basis for the referendum on self-determination. In line with a decision by the General Fono, an overall majority of two thirds of the valid votes cast was required for a change to the status of Tokelau.

10. The first referendum on self-determination was held sequentially in Apia and on the three atolls from 11 to 15 February 2006 (see A/AC.109/2006/20). The outcome of the referendum fell short of the required two-thirds majority, with 60 per cent of valid Tokelauan votes cast in favour of self-government in free association with New Zealand. The United Nations, which formally monitored the referendum, deemed the process credible and reflective of the will of the people of Tokelau. A

representative of the Special Committee accompanied by a Political Affairs Officer of the Department of Political Affairs also observed the referendum process.

11. In August 2006, the General Fono voted to hold a second referendum on Tokelauan self-determination in late 2007. The proposed constitution and the draft treaty, commonly referred to as the self-determination package, were to be the same and the legal threshold for acceptance of the proposal would remain at a two-thirds majority.

12. The second referendum was held from 20 to 24 October 2007. The result, with 64.4 per cent in favour, was again below the two-thirds threshold, thereby leaving the status of the Territory unchanged (see A/AC.109/2007/19). As with the first referendum, the United Nations formally monitored the voting, with representatives of the Special Committee on Decolonization and the Department of Political Affairs present as observers.

13. Following the results of the second referendum, the General Fono requested the Government of New Zealand to keep on the table the entire self-determination package (i.e., the draft treaty and draft constitution that had been agreed on and had served as the foundation for the previous ballots). The Council of Ongoing Government noted that Tokelau could in the future change the two-thirds majority threshold for the referendum, but should put in place measures to ensure that a threshold was supported by a clear majority in each village to guarantee unity. The Council of Ongoing Government also noted Tokelau's strong commitment to self-determination and its wish to have a constitution, albeit one that did not encompass the free association self-government provisions.

14. The outcomes of the referendums, neither of which reached the threshold of support set by Tokelau's General Fono for a change of status, have been acknowledged and accepted by New Zealand. As a follow-up to the 2007 referendum result, the Prime Minister of New Zealand met with Tokelau's leaders in February 2008, to discuss the next steps in the New Zealand-Tokelau relationship. It was agreed that a "pause" should be taken in Tokelau's self-determination efforts, focusing instead on achieving Tokelau's basic needs.

III. Economic conditions

A. General economic overview

15. Tokelau faces major constraints on its economic growth, including such natural disadvantages as small size, isolation, wide spread of the atolls, lack of natural resources and natural disasters (such as cyclones). Tokelau's economic stability has so far been made possible by the high levels of assistance provided by the administering Power. With the continued assistance of New Zealand, the Council of Ongoing Government of Tokelau intends to maintain its focus on implementing various priority projects related to infrastructure, the delivery of core services and shipping, as well as on developing the villages and to strengthening the General Fono, the Council of Ongoing Government of Tokelau and the Tokelau Public Service.

16. Tokelau has a unique combination of traditional and modern income resource streams. With Government funding, many villagers are paid regularly for various village duties ranging from construction and boat-loading to assistance to the

General Fono and other public entities. Much investment has been made in expanding commercial fisheries; however, maintaining artisanal fisheries at a subsistence level remains the preferred approach since the lack of reliable transport makes competition with Samoan fisheries, which are closer to markets, challenging.

17. Traditional and communal values and practices play a key role in contributing to a state of general well-being and equity in the Territory, as evidenced by the *inati* system and the importance attached to upholding the concept of the family and/or the extended family. The tradition of *inati* requires the deposit at a central location of food and produce, which is then apportioned by the distributors on the basis of "share groups". The principle provides for a secure distribution system that addresses the needs of every member of the community, including the elderly, widows, single parents and children.

18. Tokelau has been able to maintain a fairly steady level of population. For that trend to continue and to avoid the migration of skilled persons, both Tokelau and New Zealand are aware that basic services must be maintained at levels which promote confidence in the quality of life on Tokelau's atolls.

B. The administering Power's assistance to Tokelau

19. Throughout 2009, discussion continued within Tokelau and with New Zealand on appropriate and achievable goals and objectives in the area of economic development. Both Tokelau and New Zealand have reaffirmed their commitment to identifying activities and projects that can be viably established and maintained.

20. Assistance is provided under the terms of three-year economic support arrangements. The most recent of these was signed by the Minister for Foreign Affairs of New Zealand and the Ulu of Tokelau in December 2007. It covers the period from 1 July 2007 to 30 June 2010 and commits up to $NZ 43.18 million in assistance for Tokelau,[2] delivered through contributions to the Tokelau International Trust Fund, formally established in November 2004. The Fund is designed to provide intergenerational security and an independent source of income to Tokelau in the future. With contributions from Tokelau, New Zealand, Australia and the United Kingdom of Great Britain and Northern Ireland, the Fund now stands at approximately $NZ 56 million.

21. Tokelau's overall budget for the period 2009-2010 is now under Tokelau's control — previously it controlled the budgetary support element but not the project assistance funds. New Zealand remains the primary source of economic support. By 2009-2010, overall New Zealand assistance to Tokelau had increased to $NZ 19.5 million.

C. Transport and communications

22. Tokelau has no airstrips and its main transportation option is that provided by a single vessel, the *MV Tokelau*, a ship with limited cargo and passenger capacity that provides service every two weeks between Tokelau and Apia, as well as inter-atoll services. The United Nations mission that visited the Territory in August 2002 concluded that the lack of transportation options was one of the greatest obstacles to

[2] As at 31 December 2008, the New Zealand dollar was equivalent to 0.58 United States dollars.

economic and social development in the Territory and recommended that serious consideration be given to the establishment of a dedicated inter-atoll ferry and an airstrip on one of the atolls. Since 2003, New Zealand has funded additional visits by larger vessels under charter from the Samoa Shipping Corporation Ltd. Recognizing that the quality of the shipping service linking Tokelau's atolls and providing contact with Samoa lies at the heart of its ongoing viability, New Zealand, as the administering Power, has committed itself to a major review of that service. In December 2009, the New Zealand Foreign Minister announced that as a result of a survey in August 2009, the MV *Tokelau* had been certified by Lloyds Classification Society as seaworthy and safe for the next two years. For his part, at the beginning of February 2010, Tokelau's outgoing Ulu stressed the importance of a sound shipping service and proper communication and expressed the hope that there would soon be progress. According to New Zealand's International Aid and Development Agency (www.nzaid.govt.nz/library/docs/factsheet-tokelau.pdf) it is envisioned that a new shipping service that will be safer and have greater cargo and passenger capacity and accommodation will begin by late 2011.

23. The ongoing development of Tokelau's infrastructure and maintenance of existing facilities is a major facet of Tokelau-New Zealand relations. Decisions on the prioritization of projects rests with the Government of Tokelau, both at the level of the public service and the village councils. Upgrading of schools and health centres has been accorded the highest priority on each atoll for the current programme cycle.

24. For more than a decade, large investments have been made to facilitate contacts for Tokelauans inter-atoll as well as with the outside world. The Telecommunications Tokelau Corporation, a $NZ 4 million international telecommunication service, was established in 1997. Tokelau also has a website (www.tkl.tk), which became operational in January 2002 and which offers both free and paid domain names. The website is the result of a commercial licensing agreement between the Corporation and a private company, Talofia Inc. It is seen as having the potential to provide some revenue to the Territory without any capital outlay by the Corporation.[7] Pursuant to a request from the atolls, the Corporation began to install new equipment on the atolls in 2009 to boost telecommunication services in the villages and to assist in creating Internet-based long-distance education opportunities.

25. In February 2002, FM radio stations were inaugurated on each of the atolls with funding from New Zealand. The radio stations are seen as an excellent means of maintaining the Territory's cultural heritage, as well as facilitating communication and transparency on community and decision-making matters, since they broadcast meetings of the Council of Elders on each atoll.

D. Power supply

26. In 2001, work was begun on a diesel-powered electricity system in all three atolls, under the auspices of the New Zealand Agency for International Development. The work was largely completed in 2008 at a cost of some $NZ 5 million. Tokelau remains keenly committed to maximum reliance on renewable energy, for environmental and economic reasons, and is working to develop appropriate strategies. A pilot photovoltaic energy grid project funded by UNDP, as well as by

[7] Press release, "History in the making" (February 2002), and the information transmitted by the Administrator of Tokelau.

contributions from the Government of France covering 15 households on Fakaofo, has been developed and is being evaluated. Intentions are for a roll-out of similar facilities for other communities in Tokelau.

IV. Social conditions

A. Education

27. Under Tokelau's compulsory education system, primary and secondary education are available to everyone. As a member of the University of the South Pacific, Tokelau also has access to the University's educational telecommunications system through a satellite established in Atafu. Despite significant funding for education over many years, education standards on the atolls remain relatively low. This is a key reason why significant numbers of families leave the atolls to seek improved educational opportunities for their children in Samoa, New Zealand and elsewhere. According to the administering Power, a major infrastructure renewal programme is continuing in Tokelau, which includes, as a first stage, the provision of new schools in Atafu and Fakaofo. Efforts have also been devoted to curriculum development, training of principals and senior staff and the extension of secondary schooling in 2009 to cover year 13. Tokelau is also working closely with the Secretariat of the Pacific Community to explore better Internet access.

B. Health care

28. The provision of adequate health services to the populations of three dispersed atolls connected to the wider world by sea transport will always be one of the most important challenges for Tokelau.

29. The major non-local sources of contributions to health care are the Government of New Zealand, the World Health Organization (WHO), the United Nations Children's Fund, the United Nations Population Fund and the United Nations Development Programme, as well as the Government of Australia and the Secretariat of the Pacific Community. The priorities of the national health plan are: (a) healthy islands and communities; (b) healthy lifestyles; (c) development of health partnerships; (d) development of accessible primary health-care services; (e) successful community participation; and (f) development and improvement of the health-service system.

30. Each of Tokelau's atolls has a basic health centre, staffed and equipped to deliver core medical care and related services. Considerable attention and funding is devoted to this core area of Tokelau's needs. As part of a major infrastructure renewal programme, Nukunonu is in the process of having its health centre substantially improved.

31. According to WHO, the general health status of Tokelauans is reasonably good; however, tobacco and alcohol consumption are relatively high among the adult population, especially in males. Obesity is widespread, with a prevalence of 70 per cent for men and 83 per cent for women 30 to 39 years of age and is attributed to diet and physical inactivity.[4]

[4] Information provided by WHO Samoa office.

V. External relations

32. As set out in paragraphs 9 and 10 of the Principles of Partnership statement, Tokelau as a Non-Self-Governing Territory has insufficient international legal personality to enter into formal international legal obligations as a State in its own right. New Zealand is responsible for entering into any such obligations on behalf of Tokelau, after consulting with Tokelau as to its wishes. Tokelau participates in regional and international organizations in its own right to the extent that those organizations provide for such participation.

33. Tokelau is a member of the Forum Fisheries Agency, the South Pacific Community, the University of the South Pacific and the Pacific Regional Environment Programme. In October 2005, Tokelau was admitted as an Associate Member of the South Pacific Applied Geoscience Commission. Later that month, the Ulu of Tokelau attended the Pacific Islands Forum meeting, where Tokelau was welcomed as an observer. Tokelau is an Associate Member of WHO and of the United Nations Educational, Scientific and Cultural Organization.

34. Apart from its relationship with New Zealand, Samoa constitutes another important bilateral contact for Tokelau. Contacts are ongoing in many areas of importance to Tokelau. A practical example of growing cooperation is the work under way to enable Tokelau to ship non-biodegradable waste to Samoa for disposal.

VI. Future status of the Territory

A. Position of the territorial Government

35. Speaking at the 23 June 2009 meeting of the Special Committee, the Ulu-o-Tokelau said that, while Tokelau remained fully committed to self-determination, the results of the two referendums held thus far had not supported a change in status. It would be several years before the General Fono considered holding another referendum. Meanwhile, more needed to be done to strengthen local capacity and infrastructure and to promote economic development. Meanwhile, in the current global financial crisis, Tokelau was taking steps to ensure that its scarce resources were used wisely, in particular by establishing development priorities, setting realistic targets and working to integrate good governance practices into its public management systems. Public expenditure would be realigned accordingly. The strong economic support that Tokelau received from New Zealand reflected both the progress made by Tokelau and the ongoing commitment of New Zealand to the Territory.

36. The Ulu-o-Tokelau acknowledged the commitment of the Special Committee to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, adding that the Territory would continue to look to the Special Committee for guidance in that regard.

B. Position of the administering Power

37. As the administering Power for Tokelau, New Zealand has maintained a strong and consistent commitment both to the aspirations of the people of Tokelau and to the principle of self-determination. It has consistently supported Tokelau's

aspirations to exercise its right to self-determination. On two referendums regarding the issue of self-determination, New Zealand provided all appropriate support for Tokelau's efforts to determine the will of its people for a possible change of status. Successive Administrators and representatives of New Zealand to the United Nations have placed on record before the Special Committee and the Special Political and Decolonization Committee (Fourth Committee) full information about New Zealand's support for Tokelau on this issue. This attitude towards the needs and aspirations of the people of Tokelau has been favourably acknowledged by those Committees on many occasions.

38. Addressing the Special Committee on 23 June 2009, the representative of New Zealand said that a core objective was to provide essential services and a good quality of life to the people of Tokelau. New Zealand would continue to work with Tokelau to meet the needs of its people, and it welcomed the continuing interest of the Special Committee.

39. While speaking before the Fourth Committee on 9 October 2009, the representative of New Zealand said that it had been two years since the people of Tokelau had voted in a United Nations-supervised self-determination referendum where, for a second time, Tokelau's electorate had not reached the threshold they themselves had set for a change of status from that of Territory to one of self-government in free association with New Zealand. Tokelau and New Zealand had then decided to focus primarily on further improving essential services on the atolls, rather than moving in the medium term to a further act of self-determination. The right to self-determination, though fundamental, was not sufficient on its own. The peoples who exercised it must also have the opportunities to develop fully, and that was New Zealand's commitment to the people of Tokelau.

C. Consideration of the question by the Special Political and Decolonization Committee (Fourth Committee)

40. While introducing a draft resolution on Tokelau at the Special Committee, the representative of Papua New Guinea said the text welcomed the assurance by the Government of New Zealand that it would continue to meet its obligations with respect to Tokelau. It also welcomed the cooperative attitude of other States and territories of the region and their support for Tokelau's economic and political aspirations, and the increasing participation of the Territory in regional and international affairs. He reiterated the co-sponsors' commendation of New Zealand's readiness to cooperate with the Special Committee and its exemplary efforts in assisting the people of Tokelau in their endeavours to realize self-determination.

D. Action taken by the General Assembly

41. At its 62nd plenary meeting, on 10 December 2009, the General Assembly, on the recommendation of the Fourth Committee, adopted resolution 64/103, on the question of Tokelau, without a vote.

42. Under the operative part of that resolution, the General Assembly:

1. *Notes* that Tokelau and New Zealand remain firmly committed to the ongoing development of Tokelau for the long-term benefit of the people of

Tokelau, with particular emphasis on the further development of facilities on each atoll that meet their current requirements;

2. *Notes also* the ongoing recognition by New Zealand of the complete right of the people of Tokelau to undertake the act of self-determination when this is considered by the people of Tokelau to be appropriate;

3. *Welcomes* the progress made towards the devolution of power to the three taupulega (village councils), in particular the delegation of the Administrator's powers to the three taupulega with effect from 1 July 2004 and the assumption by each taupulega from that date of full responsibility for the management of all its public services;

4. *Recalls* the decision of the General Fono in November 2003, following extensive consultations in all three villages and a meeting of the Special Committee on the Constitution of Tokelau, to explore formally with New Zealand the option of self-government in free association, and the discussions subsequently held between Tokelau and New Zealand pursuant to the decision of the General Fono;

5. *Recalls also* the decision of the General Fono in August 2005 to hold a referendum on self-government on the basis of a draft constitution for Tokelau and a draft treaty of free association with New Zealand, and notes the enactment by the General Fono of rules for the referendum;

6. *Notes* that two referendums to determine the status of Tokelau, held in February 2006 and October 2007, did not produce the two-thirds majority of the valid votes cast required by the General Fono to change Tokelau's status from that of a Non-Self-Governing Territory under the administration of New Zealand;

7. *Commends* the professional and transparent conduct of both the February 2006 and the October 2007 referendums, monitored by the United Nations;

8. *Acknowledges* the decision of the General Fono that consideration of any future act of self-determination by Tokelau will be deferred and that New Zealand and Tokelau will devote renewed effort and attention to ensuring that essential services and infrastructure on the atolls of Tokelau are enhanced and strengthened, thereby ensuring an enhanced quality of life for the people of Tokelau;

9. *Also acknowledges* Tokelau's initiative in devising a strategic economic development plan for the period 2007-2010;

10. *Further acknowledges* the ongoing and consistent commitment of New Zealand to meeting the social and economic requirements of the people of Tokelau, as well as the support and cooperation of the United Nations Development Programme;

11. *Acknowledges* Tokelau's need for continued support from the international community;

12. *Recalls with satisfaction* the establishment and operation of the Tokelau International Trust Fund to support the ongoing needs of Tokelau, and calls upon Member States and international and regional agencies to contribute

to the Fund and thereby lend practical support to Tokelau in overcoming the problems of smallness, isolation and lack of resources;

13. *Welcomes* the assurance of the Government of New Zealand that it will meet its obligations with respect to Tokelau;

14. *Also welcomes* the cooperative attitude of the other States and territories in the region towards Tokelau, and their support for its economic and political aspirations and its increasing participation in regional and international affairs;

15. *Calls upon* the administering Power and United Nations agencies to continue to provide assistance to Tokelau as it further develops;

16. *Welcomes* the actions taken by the administering Power to transmit information regarding the political, economic and social situation of Tokelau to the Secretary-General;

17. *Also welcomes* the commitment of both Tokelau and New Zealand to continue to work together in the interests of Tokelau and its people;

18. *Requests* the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to continue to examine the question of the Non-Self-Governing Territory of Tokelau and to report thereon to the General Assembly at its sixty-fifth session.

43. At the same meeting, the General Assembly also adopted resolution 64/106 on the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, paragraph 6 of which refers to Tokelau.